



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701

OR95-721

Dear Mr. Monroe:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28555.

The Texas Department of Transportation (the "department") received a request for information pertaining to construction at and around Parmer Lane and Rolling Hill in Austin, Texas. The requestor, on behalf of his client, also seeks records as to the location of equipment related to the construction project, for the period from July 1 to July 9, 1993. You have submitted for review by this office documents responsive to that request. However, you contend that these documents are excepted from disclosure under section 552.103(a).

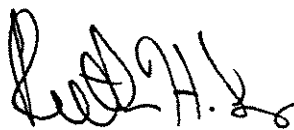
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have provided information showing that the requestor's client was in an accident that occurred on July 8, 1993, at the intersection of Parmer Lane and Rolling Hill in Austin.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. We note that a suit for personal injury generally must be brought within two years of the date the cause of action arose.

See Civ. Prac. & Rem. Code § § 16.003 (general two-year statute of limitations for personal injuries).¹ However, you have provided no information that shows litigation is pending in regard to this accident. Under these circumstances, the department has not met its burden of showing the applicability of section 552.103(a). The records at issue must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 28555

Enclosures: Submitted documents

cc: Mr. Robert R. Swafford
Lawyer
1204 Nueces
Austin, Texas 78701
(w/o enclosures)

¹You submitted a letter, dated December 22, 1993, that provided notice of a possible claim against the department for personal injuries allegedly arising under title 5, chapter 101 of the Civil Practices and Remedies Code, commonly known as the Texas Tort Claims Act (the "act"). *See* Civ. Prac. & Rem. Code §§ 101.001 ("governmental unit" defined); .021 (providing for governmental liability under certain circumstances"). We note that you provided no information showing that the two year statute of limitations period is not applicable. *See* Civ. Prac. & Rem. Code § § 16.003 (general two-year statute of limitations for personal injuries); 101.006 (act does not affect defenses, immunities, and jurisdictional bars otherwise available). Suits that are brought under the act outside of the applicable statutory period can be dismissed. *Dalon v. City of DeSoto*, 852 S.W.2d 530 (Tex. App.—Dallas, 1992, no writ); *Bishop v. Texas*, 577 S.W.2d 377 (Tex. Civ. App.—El Paso, 1979, no writ).